IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 8TH MARCH 2007 / 17TH PHALGUNA 1928

WA.No. 2268 of 2006(B)

AGAINST THE JUDGEMENT IN OP.9031/1998 Dated 11/01/2006

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APPELLANTS: RESPONDENTS
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1. UNION OF INDIA, REPRESENTED BY SECRETARY, MINISTRY OF DEFENCE, CENTRAL SECRETARIAT, NEW DELHI.

2. SENIOR RECORD OFFICER, SIGNAL ABHILEKH KARYALAYA, SIGNAL RECORDS, POST BAG NO.5, JABALPUR, M.P.

3. THE CONTROLLER OF DEFENCE ACCOUNTS (PENSION), ALLAHABAD.

4. OFFICER-IN-CHARGE, SIGNAL RECORDS, MADHYA PRADESH.

BY ADV. SRI.THOMAS MATHEW NELLIMOTTIL

RESPONDENTS: PETITIONERS
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1. P.VIMALA BAI, W/O. LATE SRI. SATHYANANDAN, RESIDING AT MEENKULATHU VEEDU, POOVANPARA, ALANCODE P.O., THIRUVANANTHAPURAM.

2. V.S.BINU, S/O. LATE SRI. SATHYANANDAN, RESIDING AT MEENKULATHU VEEDU, POOVANPARA, ALANCODE P.O., THIRUVANANTHAPURAM.

3. V.S.SUNI, D/O. LATE SRI. SATHYANANDAN, RESIDING AT MEENKULATHU VEEDU, POOVANPARA, ALANCODE P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.R.S.KALKURA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 28/02/2007, THE COURT ON 08/03/2007 DELIVERED THE FOLLOWING:

P.R.Raman & Antony Dominic, JJ.
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W.A.No.2268 of 2006
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Dated this the 8th day of March, 2007.

JUDGMENT

Antony Dominic,J.

Respondents in O.P.No.9031 of 1998 are the appellants. The Original Petition was filed by the respondents herein, who are the widow and children of one late Sathyanandan (hereinafter referred to as 'the deceased'). The deceased had entered in the Military service on 20.1.1966 and after 10 years and 15 days of service, the respondents herein were informed that he died on 18.6.1976 at "field". As per the certificate, Ext.P1 issued by the authorities, the cause of the death was indicated as "not yet known". The claim raised by the wife for special family pension was rejected by Ext.P2 for the reason that the death of her husband was not attributable to the Military service. Appeals filed by the wife were also rejected by Ext.P4 and Ext.P6. Finally, it was by Ext.P10 dated 13.8.1997 that the wife was informed that the cause of death of her husband was "Organo Phosphorous Pesticide". Still later, she was again informed by Ext.P11 that the death of her husband was not due to disease, which is neither attributable to nor aggravated by Military service. It was in the

aforesaid circumstances that the respondents sought to quash the orders rejecting their claim for special family pension and a direction to provide employment on compassionate ground to the third respondent in the Original Petition that was filed by them.

2. In the counter affidavit filed by the appellants, their stand was that the death occurred due to "Organo Phosphorous Pesticide" poisoning and therefore, was not attributable to or aggravated by the Military service, rendering the respondents ineligible for special family pension claimed by them. It was also contended that the prayer for compassionate appointment cannot be entertained as application was not made within five years of the death of the Military personnel.

3. The learned single Judge, who heard the Original Petition, disposed of the case by upholding the claim for special family pension and directed the appellants herein to compute the benefits available to the respondents and pay the same with all arrears within three months from the date of receipt of a copy of that judgment. However, the prayer for compassionate employment for the third respondent was declined. It is challenging this judgment that the respondents in the Original Petition have come up in appeal.

4. We heard counsel for the appellants as also the respondents.

5. First argument raised by the learned counsel for the

appellants was that because the death was not attributable to nor aggravated by the Military service, the prayer for grant of special family pension was unsustainable. It is the admitted case that at the time of entry into service, the deceased was of good health. The respondents also have no case that this was a case of suicide. In such circumstances, it was the burden of the respondents to at least initially prove that the death due to poisoning was not attributable to Military service.

5. A Full Bench of this Court in the decision reported in **Baby** v. **Union of India** - 2003 (7) K.L.T. 363 held that if a person was fit and healthy at the time when he was recruited for army service, the initial burden is on the authorities to show that the disability due to which he was discharged from service was not attributable to military service. The question in this case is whether the respondents had discharged the burden cast upon them. As already noted, good health of the deceased at the time of entry in the service is beyond dispute. The only manner by which the respondents could have discharged this burden was to have produced the medical records regarding the cause of death of the deceased. For reasons of their own, the respondents have not produced any of the medical records to discharge their burden, as held by the Full Bench of this Court. On the other hand,

what they have produced was only Ext.R1(a),a communication issued by the Accounts Officer (Pensions) to the Officer- in-charge, Records, Signals, Jabalpur, which cannot be of any evidentiary value to prove the cause of death of the deceased. In such circumstances, the learned single Judge has rightly held that the respondents herein miserably failed in discharging their burden of proving that the death of the deceased was not attributable to Military service. We therefore, do not find any error in the conclusion of the learned single Judge, warranting to be interfered with.

5. Counsel for the appellants relied on the decision in the case of **Controller of Defence Accounts (Pension)** v. **Balachandran Nair** – 2005(4) K.L.T. 703 (SC) and contended that where the medical authorities have concluded that the cause of the death was not attributable to Military service, the learned single Judge could not have granted relief upsetting such expert opinion. We have anxiously considered this contention and gone through the judgment and in our view the law laid down by the Supreme Court is of no assistance in the facts of this case. In that case, the Medical Board's opinion was made available to the court which clearly was to the effect that the injury/illness suffered by the respondent in that case was not attributable to the Military service. As the learned Judge found and as

noted herein above, the medical records have not been placed on record in support of the contention raised by the appellants. Further the case dealt with by the Supreme Court was one where a Military personnel was invalidated and in the process he was examined by a Medical Board unlike in this case. Therefore, both on facts and otherwise, the judgment stands on a totally different footing and is of no assistance to the appellants.

6. Lastly, counsel for the appellants contended that the death having occurred on 18.6.1976, the Original Petition filed in 1998 was highly belated and on that ground, the relief should have been declined. Here also, we are unable to agree with the counsel. Though the death occurred way back on 18.6.1976 it was by Ext.P10 dated 13.8.1997 the wife was informed of the cause of death. It was still later that by Ext.P11 dated 22.4.1977 that the second appellant informed the wife that the death of her husband was due to a causes which are neither attributable to nor aggravated by the Military service. We accept the contention of the respondents that it is only thereafter that they could approach the Court. Therefore, there is no delay on the part of the respondents in approaching the court,disentitling them to obtain reliefs. Even otherwise, it being the case of special family pension, we are of the view that the cause of

action is a recurring one and delay by itself will not totally extinguish their right.

For the aforesaid reasons, we agree with the conclusions of the learned single Judge and find no merit in the appeal. Accordingly, the Writ Appeal will stand dismissed, without any order as to costs.

P.R.Raman,
Judge.

Antony Dominic,
Judge.

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